IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1399 OF 1990

M/s. M.B. Impex, a Sole Proprietory
Concern of Mr. Vinod Gupta of Bombay
Inhabitant having its Office at 161/C,
Mittal Towers, 16th Floor,
Nariman Point, Bombay 400 021 .. Petitioner

V/s.

1. Union of India

2. The Collector of Customs,
Bombay, having his office at
New Customs House, Ballard Estate,
Bombay 400 038.

3. Mr. R. Jayaraman,

4. Mr. P.K. Desai,
(Nos. 3 and 4 being members
of the Customs, Excise and
Gold (Control) Appellate
Tribunal, West Regional
Bench, having their office
at P.N.B. House, Sir P.M.
Road, Bombay 400 001 .. Respondents

Mr. N.S. Thakkar with Mr. M. Baya for the Petitioner
Mr. A.J. Rana, Sr. Advocate with Mr. H.V. Mehta for the Respondents

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.
DATED : 17.02.2005

JUDGMENT (PER - S. RADHAKRISHNAN, J.):-

1. By this Petition, the Petitioner is challenging the order dated 8.6.1989 passed by the Collector of Customs, being the order in original and also the Appellate order passed by the Customs Excise & Gold (Control) Appellate Tribunal dated 24.10.1989.

2. The Petitioner contends that in February, 1989, the Petitioner had imported a consignment of seeds of almonds

(Non Parell Variety) from California, U.S.A. and had also filed the requisite bill of entry. The Petitioner had sought clearance of the said goods from R.E.P. licence and in the said licence, there was an endorsement for import of "seeds". The Petitioner's contention is that what is imported was "seeds" and not "almonds". The Collector of Customs by the aforesaid order dated 8.6.1989 came to the conclusion that the aforesaid imported goods were not admissible for import in terms of the replenishment licence produced by the Petitioner and accordingly passed an order of confiscation under section 111(d) of the Customs Act r/w Section 3 of the Imports & Exports (Control) Act, 1947. Apart from confiscating, the Collector of Customs also imposed a redemption fine of Rs. 18 Lakhs and a penalty of Rs. 2 Lakhs.

3. The Petitioner aggrieved by the aforesaid order of 8.6.1989, had approached The Customs Excise and Gold (Control) Appellate Tribunal and The Customs Excise and Gold (Control) Appellate Tribunal by it's order dated 24.10.1989 had concurred with the order of the Collector of the Customs on the issue that what was imported by the Petitioner could not come within the term "seeds" and had accordingly held that the import was without a valid licence and the same was liable to be confiscated. The Customs Excise & Gold (Control) Appellate Tribunal also did not find anything wrong in the exercise of the discretion by the Collector in imposing Rs. 18 Lakhs as redemption fine, as the goods were valued at Rs. 18,30,560/- with a profit margin of about hundred per

cent.

4. Even on the issue of personal penalty of Rs. 2 Lakhs, the Customs Excise & Gold (Control) Appellate Tribunal came to the conclusion in view of the large quantity of almonds being imported, the same could not have been meant to be used as "seeds" and as such the Customs Excise & Gold (Control) Appellate Tribunal held that import by the Petitioner, of the aforesaid almonds was not bonafide and as such imposition of personal penalty was also justified.

5. The learned counsel for the Petitioner brought to our notice a judgment of our Division Bench in **SVA Udyog Viniyog Ltd. Vs. Union of India 1993 (65) E.L.T. 20 (Bom),** wherein the Division Bench was dealing with an identical issue of import of almonds under REP licence, had clearly held that the same could not come within the words "seeds", however the Division Bench in the said case, had reduced redemption fine to 50% and personal penalty also to 50% and had observed as under:-

> "Taking into consideration all the facts and circumstances of the case, in our judgment, the proper order would be to reduce the redemption fine and the penalty to 50% of what was levied by the Additional Collector. It is required to be stated that while admitting the appeal, the Division Bench of this Court had directed that the appellants should pay 50% of the redemption fine and personal penalty and for the remaining 50%, bank guarantee should be furnished. It is not in dispute that the appellants have paid 50% of the redemption fine and the penalty. In our judgment, such payment is sufficient in the facts and circumstances of the case."

The learned counsel for the Petitioner also fairly stated that the aforesaid judgment of our Division Bench in **SVA Udyog Viniyog Ltd. Vs. Union of India** was carried in Appeal by way of Special Leave Petition to the Supreme Court and the Supreme Court by it's judgment and order dated 1.8.2001 in **SVA Udyog Viniyog Ltd. V. Union of India 2001 (133) ELT 261 (S.C.)** had concurred with the judgment of the Bombay High Court and dismissed the Special Leave Petition and had observed that what was imported was not seeds for germination or plantation and would not fall under the relevant entry of seeds/bulbs/mother plant germs plasm.

6. In the instant case, the Petitioner had deposited a sum of Rs. 9 Lakhs out of Rs. 18 Lakhs redemption fine with the Respondents and also deposited a sum of Rs. 2 Lakhs with the Respondents being 50% of the redemption fine and the entire personal penalty, pursuant to Division Bench order passed by this court in the year 1991, in an Appeal preferred by the Petitioner.

7. Having regard to the aforesaid facts and circumstances and specially in view of the judgment of our Division Bench in **S.V.A. Udyog Viniyog Ltd. Vs. Union of India,** which was confirmed by the Supreme Court, we do not find any merit in the above Petition, hence Rule stands discharged, however in the light of the judgment of our Division Bench, the Petitioner's liability to pay redemption fine will be reduced to Rs.

9 Lakhs instead of Rs. 18 Lakhs and similarly, penalty would be Rs. 1 Lakh instead of Rs. 2 Lakhs, having regard to the facts and circumstances of the case.

8. Shri Rana, does not dispute that the Petitioner has already deposited a sum of Rs. 2 Lakhs towards penalty and in the light of the above judgment of our Division Bench, we are inclined to hold that as far as penalty is concerned, the same should be made 50%, i.e. to say Rs. 1 Lakh. Under these circumstances, the Respondents are liable to refund the additional sum of Rs. 1 Lakhs, which has been lying with them, since the year 1991. Almost 14 years have passed and if the amount would have been invested, the same would have grown substantially.

9. Having regard to the facts and circumstances, we are inclined to direct the Respondents to pay a sum of Rs. 4 Lakhs to the Petitioner, inasmuch as the said additional sum of Rs.1 Lakh was lying with them for the last 14 years. The Respondents shall pay the Petitioner the said sum of Rs. 4 Lakhs (Rs. Four Lakhs Only) on or before 30.4.2005. Writ Petition stands disposed of in the above terms.

10. Parties to act on an ordinary copy of this order duly authenticated by the Associate/Court Stenographer.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)